

APPEAL NO. 040405
FILED APRIL 7, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 9, 2004. The hearing officer determined that the appellant (claimant herein) sustained an injury at work on _____; that the respondent (carrier herein) is relieved from liability under Section 409.002 because the claimant failed to timely notify his employer of the claimed injury pursuant to Section 409.001; and that because the carrier is relieved of liability the claimant's injury is not compensable and the claimant did not have disability. The claimant appeals, contending that the claimant did timely report his injury. The carrier responds that we should affirm the decision of the hearing officer.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

This case turns on the hearing officer's resolution of the timely notice issue as he found that the claimant sustained a work-related injury resulting in the claimant being unable to obtain and retain employment, but concluded that this injury was not compensable and that the claimant did not have disability because the carrier was relieved of liability due to the fact that the claimant did not timely report the injury to the employer. Thus, we will address the issue of timely notice.

The 1989 Act generally requires that an injured employee or person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). Conflicting evidence was presented on the disputed issue of timely notice. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations on timely notice of injury are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W. 2d 175 (Tex. 1986). This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica L. Ruberto
Appeals Judge